

ENTERED

October 18, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

APRIL M. FLORES,

§

Plaintiff,

§

VS.

§ CIVIL ACTION NO. 1:20-CV-169

THE CITY OF SAN BENITO, TEXAS, *et al.*,

§

Defendants.

§

ORDER

Plaintiff April M. Flores, as mother of Ricardo Trevino III and as the representative of his estate, filed this lawsuit after police officers fatally shot Trevino following a vehicular chase. Flores sued numerous law enforcement officers for unlawful seizure and use of excessive force, and the City of San Benito and Cameron County for failure to train and supervise the officers.

In July 2021, Defendant David Rebolledo moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(5) and 12(b)(6), arguing that he was not properly served and that Flores has not stated a claim of relief against him as to unlawful seizure/false arrest. (Motion, Doc. 56)

On September 24, 2021, the Magistrate Judge issued a Report and Recommendation, recommending that the Motion to Dismiss be granted. (Doc. 69) Specifically, the Report and Recommendation concludes that the claim of unlawful seizure/false arrest and any claims for damages made pursuant to the Texas Constitution should be dismissed with prejudice for failure to state a claim upon which relief can be granted. (*Id.* at 9) In addition, the Magistrate Judge recommends that the claim of excessive force be conditionally dismissed with prejudice for failure to properly serve Rebolledo, and that the dismissal become final if Flores fails to effectuate proper service per the Court's instructions and file the complete returns of service by November 12, 2021. (*Id.* at 13) No party filed objections. The Court finds no plain error in the Report and Recommendation.

The Court **ADOPTS** the Report and Recommendation (Doc. 69). Accordingly, it is:

ORDERED that Defendant David Rebolledo's Motion to Dismiss (Doc. 56) is **GRANTED**;

ORDERED that all of Plaintiff April M. Flores's claims against Defendant David Rebolledo for unlawful seizure/false arrest and for damages pursuant to the Texas Constitution are **DISMISSED WITH PREJUDICE**; and

ORDERED that Plaintiff April M. Flores's claim of excessive force against Defendant David Rebolledo is conditionally **DISMISSED WITH PREJUDICE** upon failure to properly effectuate service and file the completed returns of service by November 12, 2021.

All other relief requested in Defendant David Rebolledo's Motion to Dismiss (Doc. 56) not expressly granted in this Order or in previous Orders of the Court is **DENIED**.

Signed on October 18, 2021.


Fernando Rodriguez, Jr.
United States District Judge